THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.12356 of 2007

Dated 05-07-2007

Between:

P.R.Reddy

…Petitioner

And

Executive Engineer (HG),
South Division, A.P. Housing Board, Hyderabad

…Respondent

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.12356 of 2007

ORDER:

The A.P. Housing Board intended to sell Plot No.5 at Baghlingampally, Hyderabad, admeasuring 460 sq. yards.

A notification was issued on 04-11-2006, inviting tenders and bids. The auction was held on 28-11-2006. The petitioner emerged as the highest bidder for a sum of Rs.29,300/- per sq. yard. As required under the terms and conditions of tender, he deposited a sum of Rs.35,50,000/-, representing 25% of the sale consideration, within 24 hours. The balance 3/4th was required to be paid within three months from the date of receipt of the letter of confirmation from the Housing Commissioner.

The petitioner submits that after waiting sufficiently, he addressed letter dated 18-04-2007, stating that he has not yet received any communication, as regards the confirmation, and requested the respondent to indicate the steps to be taken at his end. Thereupon, the petitioner received a reply dated 30-04-2007, from the respondent to the effect that the letter of confirmation dated 08-12-2006 was received on 14-12-2006 by the representative of the petitioner, who had participated in the auction.

Petitioner states that a person, by name, P.Sampath, who assisted him at the time of auction, had left the service, on account of strained relations, in December, 2006, and narrating these facts, he submitted a detailed representation on 04-06-2007. His grievance is that the respondent has not taken any steps thereon.

On behalf of the respondent, a detailed counter-affidavit is filed. It is stated that the letter of confirmation was collected by a person, by name, Sampath, who had represented the petitioner at the time of auction. It is also stated that on 28-11-2006, another plot was also put to auction, and the successful bidder had complied with all the steps, whereas the petitioner committed default.

Sri V. Tulasi Reddy, learned counsel for the petitioner, submits that the petitioner was very anxious to get the contract concluded, by

paying the balance of the amount, and having waited sufficiently, on his own accord, he approached the respondents with a representation. He contends that except that the person, by name, Sampath, had accompanied and assisted him, at the time of auction, he did not give any specific authorization to act on his behalf. He submits that the said employee had played mischief, having left the service, and the petitioner cannot be penalized for it.

Sri J. Prabhakar, learned Standing Counsel for the respondent, on the other hand, submits that the whole process is time bound, and once the letter of confirmation has been issued to an authorized representative, the time started running for the petitioner, to take further steps. He contends that the petitioner lost his right to pay the balance.

On emerging as the highest bidder, the petitioner made a deposit of Rs.35,50,000/-, representing 25% of the sale consideration. According to condition No.2, the balance is required to be deposited within three months from the date on which the confirmation by the respondent is received. It is the categorical case of the petitioner, that he did not receive any communication, and on his own accord, he made representation on 18-04-2007 for necessary steps. The respondent, on the other hand, pleads that the letter of confirmation was collected by a representative of the petitioner.

There appears to be some communication gap between the petitioner, on the one hand, and the respondent, on the other hand. Assuming that a person, by name, Sampath, had collected the letter of confirmation, on behalf of the petitioner, it needs to be seen that, having parted with a sum of Rs.35,50,000/-, the petitioner did not keep quiet. Soon after the expiry of the period of three months, the petitioner came forward with a representation. The respondent himself was not sure, as to the legality of the alleged receipt of letter of confirmation by

Mr.Sampath. The intrinsic evidence for this is, that even after expiry of three months, from the date of alleged receipt, nothing came forward. No communication was addressed to the petitioner, be it, the one, requiring him to pay the amount, or informing about forfeiture of the amount, already paid. Further, the contract itself provides for levy of interest at 10% per annum, for belated payment. In other words, the Rule of time being the essence of contract is relaxed to a larger extent. It is not as if there is a lapse of very long time, between the date of auction and the date on which, the petitioner expressed his willingness to pay the balance. This Court is of the view that interests of the parties can be protected by directing the petitioner to pay the balance of consideration within four weeks, with interest at 12% per annum.

Hence, the writ petition is allowed, and the petitioner is permitted to pay the balance of consideration within four weeks from today with interest at 12% per annum from 15-03-2007 onwards. As and when the amount is paid, the respondent shall take necessary steps for transferring the pot in favour of the petitioner.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.05-07-2007

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